



*Copies To: MJK, B. Ralston
J. SANDRUS*

November 1, 1996

Marybeth Peters
Register of Copyrights
Copyright Office
Library of Congress
Department 17
Washington, D.C. 20540

Re: Noncommercial Educational Broadcasting Compulsory License
61 Fed. Reg. 54458 (October 18, 1996) [Docket No. 96-6 CARP NCBRA]

Dear Marybeth:

On behalf of the Public Broadcasting Service, National Public Radio, Corporation for Public Broadcasting, American Society of Composers, Authors and Publishers ("ASCAP") and Broadcast Music, Inc. ("BMI"), we write in response to the notice published in the Federal Register announcing a voluntary negotiation period and procedural dates for a copyright arbitration royalty panel ("CARP") proceeding for the noncommercial educational broadcasting compulsory license under Section 118 of the Copyright Act.

As you know, Section 118(c) of the Copyright Act and Section 251.61(c) of the Library's regulations both refer to the commencement of proceedings on June 30 of the year that agreements and rates expire. It is our belief that the schedule outlined in the October 18, 1996 notice appears to be inconsistent with the statutory and regulatory timetable established for these proceedings in Sections 251.60 and 251.61(c).

Consistent with the statute and regulations, past proceedings, including the 1992 public broadcasting rate setting proceeding, began on June 30. The Copyright Royalty Tribunal ("CRT") sent letters to the parties on May 1 requesting settlement status reports by mid-July. In August, the CRT, at the parties' request, postponed the deadline for filing written direct cases from mid-September to mid-October. By early October, the parties had reached agreements and filed written direct cases for unaffiliated composers, settlement agreements, and joint proposals on October 19, 1992.

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We are mindful of the policy of the Library of Congress to encourage private settlement of a rate structure for the use of copyrighted non-dramatic musical works by noncommercial broadcasting entities, and to avoid the necessity of a CARP proceeding. We recognize the Library's concern regarding the number of CARP and other proceedings to be conducted in 1997 and the time- and labor-intensive nature of such proceedings. As parties to many of these same proceedings, we share similar concerns.

In the past public broadcasting has been able to reach voluntary license agreements with all the music licensing organizations. In some instances, agreements have automatically renewed pursuant to their own terms. We are all optimistic that we will be able to reach voluntary license agreements next year as we have in the past.

While it is our intent to pursue such agreements, the timeframe set forth in the notice would impose a serious hardship on public broadcasting and the music rights licensing organizations and would render meaningful, well-prepared negotiations impossible. Preparation for private negotiations involves the compilation of volumes of data regarding music usage, programming, audience composition, cost and funding. Without the thorough organization and review of such information, we cannot expect to participate in productive negotiations.

As noted above, the traditional June 30 date for the commencement of proceedings has additional practical significance. Some of public broadcasting's agreements provide for automatic renewal for an additional five-year period on the same terms, absent notice of termination by either party before July 1, 1997. In the past, public broadcasting has waited until after July 1 to begin negotiations of these agreements, as it may not be in either party's interest to terminate them.

The nature of these particular rate-setting proceedings requires a more flexible timetable. Unlike satellite and cable rate-setting proceedings in which a group of users negotiates with a group of copyright owners for a single set of rates, in the case of noncommercial rate adjustments, public broadcasting negotiates separately with each of the music rights licensing organizations. For example, PBS and NPR are parties to four separate agreements, each of which may need to be re-negotiated; the music rights licensing organizations negotiate with other educational users, as well as public broadcasting. This structure naturally requires a longer period for negotiation. Due to limited resources, it would be impossible to negotiate all of these agreements simultaneously.

Nor do we believe that the cost and burden of filing written direct cases on January 10, 1997 would be productive, as we will need to focus our attention on the voluntary negotiations. We cannot do both in the time allotted. Forcing the parties prematurely to invest the resources to prepare for litigation may, in fact, defeat the incentive to settle.

In the past, public broadcasting has used as guidelines the rates reflected in the voluntary agreements between public broadcasting and the music rights licensing organizations in proposing rates for unaffiliated copyright owners. Public broadcasting believes that the opportunity to reach agreement prior to proposing rates for such unaffiliated copyright owners will facilitate subsequent uncontested proceedings and provide a sound basis for public broadcasting's proposals.

The timetable announced requires the parties to negotiate nearly 14 months before the current rates and terms expire. To commence negotiations on November 1, 1996, we would be required to proceed without relevant data for the full 1996 calendar year and without any data for 1997. Such a schedule would be contrary to sound business practices.

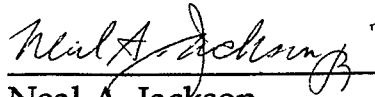
For the foregoing reasons, we believe it is imperative to revise the schedule. We would like the opportunity to meet with you to discuss alternative procedures and will call your office next week. To the extent the Library is concerned about deadlines and requirements that apply to CARP proceedings generally, we are willing to agree to an alternative schedule to avoid unnecessary expenses of preparing cases prematurely.

Thank you in advance for your consideration. We look forward to your response.

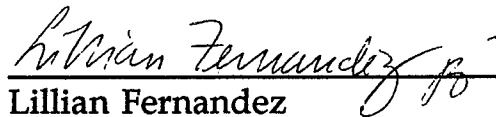
Sincerely,



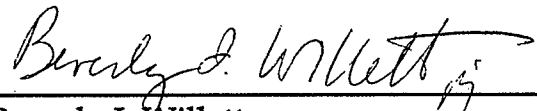
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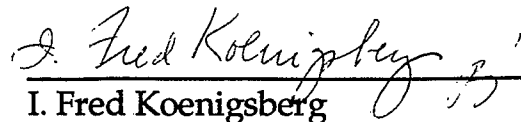
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cc: William Roberts
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